HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 630 of 2007

Between:

G. Srinivas

… Appellant

And

The Hon'ble Presiding Officer,
Centrtal Government Industrial Tribunal-cum-
Labour Court, Hyderabad & another

… Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri T. Prasanna Kumar

Counsel for respondent No.2: Shri S. Ramesh for
Shri C.R. Sridharan

August 10, 2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 11.12.2006 passed by the learned Single Judge in Writ Petition No.25061 of 2007, whereby he set aside award dated 12.01.2004 passed by the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad (for short, 'the Tribunal') in I.D.No.33 of 2001 for payment of Rs.5,000/- to the appellant.

The appellant and Union Bank Employees Union jointly raised a dispute in the matter of the alleged wrongful termination of the former's service by the management of the Union Bank of India (for short, 'the bank') with effect from 13.10.1996. The same was referred by the

Government of India to the Tribunal under Section 10(1)(c) of the Industrial Disputes Act, 1947 (for short, 'the Act'). In the statement of claim filed by the President of the Union, it was averred that the appellant had worked in the High Court Branch of the bank from 1.7.1995 to 12.10.1996 and that his service was terminated without complying with the mandate of Section 25-F of the Act. In the counter, it was pleaded that the appellant was never employed in the services of the bank and that his claim for reinstatement was based on an entirely concocted story. The appellant examined himself and produced documents, which were marked as Ex.W1 and Ex.W2. He also examined Shri H.L. Prakash Rao, who is said to have worked as Cashier-cum-Clerk in the High Court Branch of the bank from 1992 to June 1996. Shri B. Uma Maheswara Rao, Assistant Manger was examined on behalf of the bank.

The learned Presiding Officer of the Tribunal briefly adverted to the pleadings of the parties and the evidence produced by them and concluded that neither of the parties have come with clean hands, but proceeded to hold that the appellant had worked for 240 days. He then considered the issue of reinstatement of the appellant and decided the same by directing the management of the bank to pay him Rs.5,000/-. All this is evinced from the following extracts of the award:

> "……Whether he has worked with them for 240 days or not, here he has filed vouchers from 1.7.1995 to 12.10.1996 that he worked for 373 days. So, it may be seen that one thing is very clear that the petitioner has worked with the respondent and it also does not appeal to common sense that more than half a dozen persons should have been employed in the said period. Hence, I hold that it is not a bogus case but a case where the petitioner has worked apparently for more than 240 days and he was entitled for notice under Sec.25-F. But, as much water has flown and there is lot of ill feeling, it will not be desirable to ask the respondent to engage him as casual labour and they can dismiss him by following Sec.25-F. It is clear that he received Rs.40/- as per Ex.W3 and W4. So, the

ends of justice would be met if he is paid for 100 days that is Rs.4000/- and Rs.1000/- towards costs of this litigation. The same would not have been awarded for outright denial by the bank that no such person exists as G. Srinivas. An individual can make not as a right but by foolishness or otherwise wrong statements. But, the bank should be more cautious in making a statement in the counter when they have got the originals that too according to MW1, no doubt has stated sweeper. The petitioner has been able to establish categorically his engagement throughout 373 days yet, the circumstances that WW2 an employee of the bank himself in the same branch supported the case of the petitioner, no doubt, turned almost hostile in cross-examination, but in re-examination again submitted that on the reverse the petitioner has signed. Therefore, it may be safely taken that he has worked for more than 240 days and he is granted the above relief. Accordingly, the reference is ordered as follows: The action of the management of the Union Bank of India in terminating the services of Sri G. Srinivas, Ex.Sub-staff is not justified. However, the petitioner is entitled for Rs.5000/- within 30 days from the publication of this award failing which he will be entitled to the same with 12% simple interest per annum after 30 days from the publication of this award."

The appellant and the management of the bank challenged the award in Writ Petition Nos.19951 and 25061 of 2004. The learned Single Judge allowed the writ petition filed by the management of the bank and dismissed the one filed by the appellant.

Shri T. Prasanna Kumar argued that the order under challenge is liable to be set aside because the learned Single Judge committed a jurisdictional error by interfering with the finding of fact recorded by the Tribunal on the issue of violation of Section 25-F of the Act. Learned counsel took us through the statements of the appellant and Shri H.L. Prakash Rao to show that the former had actually worked in the employment of the bank and was paid wages through vouchers and argued that the learned Single Judge gravely erred by setting aside the award.

In our opinion, there is no merit in the arguments of the learned

counsel. Although the scope of judicial review of an award passed by the Tribunal is extremely limited, the Courts have consistently held that a finding of fact recorded by the subordinate court or Tribunal can be interfered, if it is found to be based on no evidence or the same is perverse - **Syed Yakoob v. K.S. Radhakrishnan and others**[1], **Shaik Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others**[2], **R.S. Saini v. State of Punjab and others**[3], **Mohd. Shahnawaz Akhtar and another v. I ADJ Varanasi & ors.**[4] and **Surya Dev Rai v. Ram Chander Rai**[5].

A reading of the order under challenge shows that the learned Single Judge independently evaluated the entire evidence and held that the finding recorded by the Tribunal is not based on any concrete evidence. The learned Single Judge further held that the evidence produced by the appellant was liable to be discarded because the vouchers on the back of which he is said to have singed in token of receipt of the amount did not contain his name and Shri H.L. Prakash Rao, who appeared to support his cause, ultimately backtracked and gave out that the workman had not signed in his presence.

We have carefully scrutinised the entire record and are convinced that the approach adopted by the learned Single Judge is correct. In his examination-in-chief, the appellant did state that he had worked in High Court Branch of the bank as Attender from 1.7.1995 to 12.10.1996 and that without giving notice or pay in lieu thereof, the management asked him not to come on duty from 12.10.1996, but in the cross-examination, the appellant admitted that his name was not written on any of the vouchers and that in the receiver's signature he had not signed. In his examination-in-chief, Shri H.L. Prakash Rao gave out that voucher – Ex.W1 dated 20.7.1995 bears the

signature of the appellant and he had signed on all the vouchers on the reverse, but in cross-examination he admitted that the appellant had not signed the vouchers before him and he cannot identify his signatures. For the sake of convenience, the depositions of the appellant and Shri H.L. Prakash Rao are reproduced below:

> "Shri G. Srinivas (the appellant)
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> Chief Examination:
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> I worked in the respondent Bank High Court Branch as Attender from 1.7.1995 to 12.10.1996. I worked as Attender. I used to take the wages daily by signing in the petty cash vouchers. Ex.W1 are the xerox copy of the petty cash vouchers (objected by the learned counsel for respondent that he will verify with the originals, if any). Ex.W2 is the xerox copy of the ration card showing that I am a pink card holder, and that I am Srinivas. No notice was given. No pay was given in lieu thereof. I was asked not to come from 12.10.1996. I pray that I may be reinstated with back wages.
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> Cross-Examination:
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> I have not filed any appointment order. I do not remember who has allowed me to work in the bank. One Mr. Narasimha Chary asked me not to come to the bank. I have studied up to 7th fail. I do not known English writing. In the receiver's signature, there are signatures of different persons but not my signatures. On none of the vouchers my name was written. The original of Ex.W1 is not with me and they are with the bank. One Mr. Narasimha Chary has permitted me to take the xerox copies of Ex.W1 who is a custodian of the record. I will not examine him to show that he gave the xerox. It is not true to suggest that I never worked even for a day at the said bank and myself and Narasimha Chary have colluded and put my signatures on Ex.W1 and filed a false case to gain wrongfully and that I am not entitled to any relief prayed for. I cannot assert or deny that there is no designation of Attender in the Bank. I have never signed on Muster rolls. I do not know whether the persons only take through employment exchange for work."

> "Shri H.L. Prakash Rao
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> Chief Examionation
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> I am working as Cashier-cum-Clerk in the respondent bank since 1996 in R.P.Road, Secunderabad. I have worked from 1990 to June 1996 at High Court Branch. G. Srinivas W.W1 also working

in High Court Branch as sub-staff. He was being paid from petty cash. I used to write petty cash vouchers. Most of the petty cash vouchers of Ex.W1 are written by me. Ex.W1 voucher dt.20.7.1995 bears the signature of WW1. In Ex.W1 almost all the vouchers have the sign of WW1 on the reverse of the vouchers.

The procedure of payment of petty cash is after I or somebody fills up petty cash voucher will go to the officer concerned who will approve the payment as in Ex.W2 and it will go to Cashier who takes the sign of the person drawing the cash and make payment after taking the signature on the reverse. WW1 also worked from July 1995 to June 1996 when I was relieved and joined at R.P. Road Branch, Secunderabad.

Cross-examination:

Some of the petty cash vouchers in Ex.W1 are prepared by me. I used to write the particulars and the amount. As per the instructions I prepared the vouchers and I am not concerned to whom it is paid. The receiver did not sign before me. WW1 did not sign any vouchers before me. I cannot identify the signature of WW1. I cannot say whether WW1 worked regularly from July 1995 to June 1996 or not. I know WW1. I know him since he started working for the bank. It is correct I depose on the instructions of the Union but it is not true to say that I deposed falsely in the chief examination. None of the vouchers show that the payment is made to WW1 as per bunch of Ex.W1- exhibits.

Further Cross-examination:

In Ex.W1 the vouchers pertain to Tulsi, Babu, Ravi, Krishna, Raju, Kareem, Kumar and Narsing. I have now verified that some of the vouchers in Ex.W1 are prepared by me and apparently there is no voucher in the name of G.Srinivas. The name of the person to whom payment is made will be written in the voucher.

Re-examination:

The person received the payment will sign on the reverse. In Ex.W1 the entire bunch the signature on the reverse purports to be of G. Srinivas but he never signed before me."

A critical scrutiny of the above reproduced statements makes it clear that the appellant had concocted the story of his employment in the bank and fabricated some record in connivance with the employees of the bank. His failure to produce or summon the original vouchers goes a long way to suggest that the vouchers produced by

him were not genuine. In his cross-examination, the appellant also admitted that his name was not written on any of the vouchers. He even refused to examine the person namely, Mr. Narasimha Chary, who is said to have given the xerox copies of the vouchers. In his cross-examination, Shri H.L. Prakash Rao clearly admitted that Ex.W1 vouchers pertain to Tulsi, Babu, Ravi, Krishna, Raju, Kareem, Kumar and Narsing and the name of the appellant does not figure in any of the vouchers. He also admitted that the appellant did not sign the vouchers before him. The learned Presiding Officer of the Tribunal did not advert to these serious lacunas in the evidence of the appellant and recorded a half-baked conclusion that the case set up by the appellant cannot be termed as bogus. Therefore, the learned Single Judge rightly exercised the power of judicial review and quashed the award.

In the result, the appeal is dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

August 10, 2007

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[1] AIR 1964 SC 477

[2] AIR 1970 SC 61

[3] JT 1999 (6) SC 507

[4] JT 2002(8) SC 69

[5] 2003(6) SCC 675